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RICHARD W. WIEKING  
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NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

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THIRD-PARTY DEFENDANT UNITED STATES

14  
15 IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA, )  
17 )  
Plaintiff, )  
18 )  
v. )  
19 )  
20 CARMELO C. CELESTRE, et al., )  
21 )  
Defendants. )

Case No. C93-3824-SBA

CONSENT DECREE

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Office of Comptroller  
U.S. EPA Region 9

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1 five-year review of the Site and issued a report. EPA is  
2 undertaking to delist the Site from the National Priorities List.

3 D. Defendant Celestre answered the Complaint, denying the  
4 allegations contained therein and asserting various affirmative  
5 defenses, and has asserted a counterclaim for contribution  
6 against the United States Department of the Interior, Bureau Of  
7 Indian Affairs, pursuant to Section 113 of CERCLA, 42 U.S.C. §  
8 9613.

9 E. The Parties that have entered into this Consent Decree  
10 deny any and all liability arising out of the transactions or  
11 occurrences alleged in the Complaint or Counterclaim.

12 F. The United States and the Settling Defendants agree and  
13 the Court by entering this Consent Decree finds, that settlement  
14 of this matter, in accordance with the terms of this Consent  
15 Decree will avoid the time and expense of prolonged and  
16 complicated litigation and that this Consent Decree is fair,  
17 reasonable, and in the public interest.

18 THEREFORE, with the consent of the parties to this Decree,  
19 it is ORDERED, ADJUDGED, AND DECREED:

20 **II. JURISDICTION**

21 1. This Court has jurisdiction over the subject matter  
22 of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42  
23 U.S.C. § 9613(b). This Court also has personal jurisdiction over  
24 the Settling Defendants. Solely for the purposes of this Consent  
25 Decree and the underlying Complaint, the Settling Defendants  
26 waive all objections and defenses that they may have to

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28 CONSENT DECREE

jurisdiction of the Court or to venue in this District and shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon the Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendants under this Consent Decree.

### IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

b. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

c. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

d. "Interest," in accordance with 42 U.S.C. § 9607(a), shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507.

e. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

f. "Parties" shall mean the United States of America and the Settling Defendants.

g. "Plaintiff" shall mean the United States of America.

h. "Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs including attorney time, that EPA and the United States Department of Justice on behalf of EPA have incurred for response actions at the Site prior to the date of entry of this Consent Decree, and accrued Interest on such costs through the date of entry of this Consent Decree.

i. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

j. "Settling Defendants" shall mean Carmelo C. Celestre and Celtor Chemical Corporation (through Insurance Company of North America ("INA"), acting on behalf and in the name of Celtor Chemical Corporation).

1 k. "Site" shall mean the Celtor Chemical Works Superfund  
2 Site, encompassing approximately 2.5 acres, located in Humboldt  
3 County, California.

4 1. "United States" means the United States of America and  
5 its departments and agencies, including the United States  
6 Environmental Protection Agency and the United States Department  
7 of the Interior.

8 **V. REIMBURSEMENT OF RESPONSE COSTS**

9 **4. Payment of Response Costs to the United States**

10 Within 30 days of the effective date of this Consent Decree,  
11 the Settling Defendants shall pay \$415,000.00 to the United  
12 States by Electronic Funds Transfer ("EFT") to the United States  
13 Department of Justice lockbox bank, referencing CERCLA Site  
14 Number 09-63 and the United States Attorney's Office file number  
15 8903205. Payment shall be made in accordance with instructions  
16 provided by Plaintiff to the Settling Defendants upon execution  
17 of the Consent Decree. Any EFT received at the United States  
18 Department of Justice lockbox bank after 11:00 a.m. (Eastern  
19 Time) will be credited on the next business day.

20 **5. Contribution by the United States.** Within a  
21 reasonable time after entry of this Consent Decree, the United  
22 States, on behalf of the United States Department of the  
23 Interior, Bureau of Indian Affairs, shall cause to be transferred  
24 to the EPA Hazardous Substance Superfund a contribution of  
25 \$35,000.00, referencing CERCLA Site Number 9T28 and the United  
26 States Attorney's Office file number 9400521.

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1           6. Anti-Deficiency Act. The contribution by the  
2 United States on behalf of the Department of the Interior, Bureau  
3 of Indian Affairs, is subject to the availability of appropriated  
4 funds. No provision of this decree shall be interpreted as or  
5 constitute a commitment or requirement that the United States  
6 obligate or pay funds in contravention of the Anti-Deficiency  
7 Act, 31 U.S.C. § 1341.

8                   VI. FAILURE TO MAKE TIMELY PAYMENTS

9           .7. Interest. In the event that payment required by  
10 Paragraph 4 is not made within 30 days of the effective date of  
11 this Consent Decree, Settling Defendants shall pay Interest on  
12 the unpaid balance and such Interest shall be compounded each  
13 fiscal year. The Interest on such unpaid balance shall begin to  
14 accrue on the 30th day after the effective date of this Consent  
15 Decree.

16           8. Stipulated Penalty. If any amounts due to the  
17 United States under this Consent Decree are not paid by the  
18 required date, the Settling Defendants shall pay as a stipulated  
19 penalty, in addition to the Interest required by Paragraph 7,  
20 \$500 per day that such payment is late. Stipulated penalties are  
21 due and payable within 30 days of the Settling Defendants'  
22 receipt from EPA of a demand for payment of the penalties. All  
23 payments under this Paragraph shall be paid by certified check  
24 made payable to "EPA Hazardous Substance Superfund," shall be  
25 mailed to the United States Environmental Protection Agency,  
26 Region 9, Superfund Accounting, P.O. Box 360863M, Pittsburgh, Pa.



1 15251, Attention: Collection Officer for Superfund, and shall  
2 reference CERCLA Site No. 9T28 and DOJ Case Number 90-11-3-1083.  
3 Copies of check[s] paid pursuant to this Paragraph, and any  
4 accompanying transmittal letter, shall be sent to the United  
5 States as provided in Section X (Notices and Submissions).  
6 Penalties shall accrue as provided above regardless of whether  
7 EPA has notified the Settling Defendants of the violation or made  
8 a demand for payment, but need only be paid upon demand.

9           9. If the United States must bring an action to  
10 collect any payment required by this Consent Decree, the Settling  
11 Defendants shall reimburse the United States for all costs of  
12 such action, including, but not limited to, costs of attorney  
13 time.

14           10. Payments made under Paragraphs 7-9 shall be in  
15 addition to any other remedies or sanctions available to the  
16 United States by virtue of Settling Defendants' failure to make  
17 timely payments required by this Consent Decree.

18           **VII. COVENANT NOT TO SUE BY PLAINTIFF**

19           11. Except as specifically provided in Paragraph 12,  
20 the United States covenants not to sue Settling Defendants under  
21 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), in any civil or  
22 administrative proceeding to recover Response Costs as defined in  
23 this Consent Decree. This covenant not to sue shall take effect  
24 upon the receipt by the United States of all payments required by  
25 Sections V and VI of this Consent Decree. This covenant not to

sue extends only to the Settling Defendants and does not extend to any other person.

12. The covenant not to sue set forth in Paragraph 11 does not pertain to any matters other than those expressly specified therein. Except as specifically provided in Paragraph 11, nothing contained in this Consent Decree shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, under Sections 104, 105 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607, or any other provision of law, against Settling Defendants or any other person or entity not a party to this Consent Decree. The United States reserves, and this Consent Decree is without prejudice to, all rights against the Settling Defendants with respect to all matters other than those expressly specified in the covenant not to sue set forth in Paragraph 11 of this Section, including, but not limited to:

- (1) claims based upon failure by Settling Defendants to meet any requirement of this Consent Decree;
- (2) claims for costs incurred or to be incurred by the the United States in connection with the Site that are not within the definition of Response Costs set forth in Section IV of this Consent Decree;
- (3) claims for injunctive relief;
- (4) liability for damages for injury to, destruction of, or loss of natural resources; and

(5) criminal liability.

**VIII. COVENANT BY SETTLING DEFENDANTS**

13. Settling Defendants hereby covenant not to sue and agrees not to assert any claims or causes of action against the United States with respect to Response Costs or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), under CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law; any claim against the United States, including any department, agency, or instrumentality of the United States pursuant to CERCLA Sections 107 and 113, 42 U.S.C. §§ 9607 and 9613, related to Response Costs; or any claims arising out of response activities at the Site. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

**IX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

14. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any

1 matter, transaction, or occurrence relating in any way to the  
2 Site against any person not a party hereto.

3 15. With regard to claims for contribution against  
4 Settling Defendants or the United States for matters addressed in  
5 this Consent Decree, the Parties hereto agree that the Settling  
6 Defendants and the United States are entitled to such protection  
7 from contribution actions or claims as is provided by CERCLA  
8 Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

9 16. Settling Defendants agree that with respect to any.  
10 suit or claim for contribution brought by them for matters  
11 related to this Consent Decree, they will notify the United  
12 States in writing no later than 60 days prior to the initiation  
13 of such suit or claim. Settling Defendants also agree that with  
14 respect to any suit or claim for contribution brought against  
15 them for matters related to this Consent Decree, they will notify  
16 in writing the United States within 10 days of service of the  
17 complaint on them. In addition, Settling Defendants shall notify  
18 the United States within 10 days of service or receipt of any  
19 Motion for Summary Judgment and within 10 days of receipt of any  
20 order from a court setting a case for trial for matters related  
21 to this Consent Decree.

22 17. In any subsequent administrative or judicial  
23 proceeding initiated by the United States for injunctive relief,  
24 recovery of response costs, or other appropriate relief relating  
25 to the Site, Settling Defendants shall not assert, and may not  
26 maintain, any defense or claim based upon the principles of

1 waiver, res judicata, collateral estoppel, issue preclusion,  
2 claim-splitting, or other defenses based upon any contention that  
3 the claims raised by the United States in the subsequent  
4 proceeding were or should have been brought in the instant case;  
5 provided, however, that nothing in this Paragraph affects the  
6 enforceability of the covenants not to sue set forth in Section  
7 VII (Covenant Not to Sue by Plaintiff).

8 **X. NOTICES AND SUBMISSIONS**

9 18. Whenever, under the terms of this Consent Decree,  
10 notice or demand is required to be given or a document is  
11 required to be sent by one party to another, it shall be directed  
12 by certified mail, return receipt requested, to the individuals  
13 at the addresses specified below, unless those individuals or  
14 their successors give notice of a change to the other Parties in  
15 writing. All notices and submissions shall be considered  
16 effective upon receipt unless otherwise provided. Written notice  
17 as specified herein shall constitute complete satisfaction of any  
18 written notice requirement of the Consent Decree with respect to  
19 the United States and the Settling Defendants, respectively.

20  
21 As to the United States:

22 Chief, Environmental Enforcement Section  
23 Environment and Natural Resources Division  
24 U.S. Department of Justice  
25 P.O. Box 7611  
26 Ben Franklin Station  
27 Washington, D.C. 20044  
28 Re: 90-11-3-1083

1 As to EPA:

2 Kim Muratore  
3 U.S. EPA, Region IX (H-7-4)  
4 75 Hawthorne Street  
5 San Francisco, California 94105

6 As to the Settling Defendants:

7 Kenneth E. Keller  
8 Stephen Dye  
9 Julie C. Grollmus  
10 Bronson, Bronson & McKinnon  
11 505 Montgomery Street  
12 San Francisco, CA 94111-2514

13 **XI. EFFECTIVE DATE**

14 20. The effective date of this Consent Decree shall be  
15 the date upon which this Consent Decree is entered by the Court.

16 **XII. RETENTION OF JURISDICTION**

17 21. This Court shall retain jurisdiction of this  
18 matter for the purpose of enforcing the terms of this Consent  
19 Decree.

20 **XIII. SIGNATORIES/SERVICE**

21 22. Each undersigned representative of the Settling  
22 Defendants to this Consent Decree and the Assistant Attorney  
23 General for the Environment and Natural Resources Division of the  
24 United States Department of Justice certifies that he or she is  
25 fully authorized to enter into the terms and conditions of this  
26

27  
28 CONSENT DECREE

1 Consent Decree and to execute and legally bind such party to this  
2 document.

3 23. Settling Defendants shall identify, on the  
4 attached signature page, the name and address of an agent who is  
5 authorized to accept service of process by mail on behalf of that  
6 party with respect to all matters arising under or relating to  
7 this Consent Decree.

8 24. If, for any reason, this Court should decline to  
9 approve this Consent Decree in the form presented, this agreement  
10 is voidable at the sole discretion of any party and the terms of  
11 the agreement may not be used as evidence in any litigation  
12 between the Parties.

13  
14 SO ORDERED THIS 5<sup>th</sup> DAY OF December, 1995.


15  
16 SANDRA GORDON MONTGOMERY  
17 United States District Judge  
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27

28 CONSENT DECREE

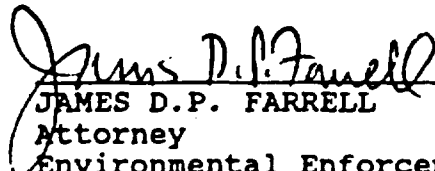
1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States v. Carmelo C. Celestre and Celtor  
3 Chemical Corporation also known as MCB Systems, Inc., Civil  
Action No. C-93-3824-SBA, relating to the Celtor Chemical  
Superfund Site.

4 FOR THE UNITED STATES OF AMERICA

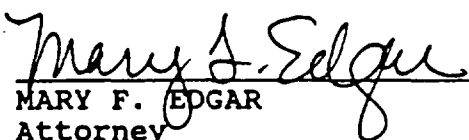
5  
6 Date: 11/22/95

  
LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

10 Date: 11/7/95


  
JAMES D.P. FARRELL  
Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
10th & Pennsylvania Avenue, N.W.  
Washington, DC 20530

15 Date: 11/27/95

  
MARY F. EDGAR  
Attorney  
Environmental Defense Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
10th & Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

21 MICHAEL J. YAMAGUCHI  
22 United States Attorney

23 Date: 11/30/95

  
CHARLES M. O'CONNOR  
Assistant United States Attorney  
Northern District of California  
450 Golden Gate Avenue  
San Francisco, CA 94102


27 CONSENT DECREE



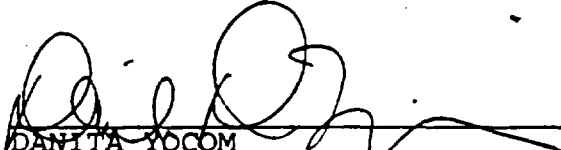
1 Date: \_\_\_\_\_

~~GERALD M. CLIFFORD~~  
~~Director~~  
~~Office of Site Remediation and~~  
~~Enforcement~~  
~~U.S. Environmental Protection Agency~~  
~~401 M Street, SW~~  
~~Washington, DC 20460~~

6 Date: 11/22/95

  
FELICIA MARCUS  
Regional Administrator  
Region IX  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, California

10 Date: 11/22/95

  
DANITA YOCOM  
Assistant Regional Counsel  
Region IX  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, California

27 CONSENT DECREE

1 Date: \_\_\_\_\_

*Gerald M. Clifford*  
GERALD M. CLIFFORD  
Director  
Office of Site Remediation  
Enforcement  
U.S. Environmental Protection Agency  
401 M Street, SW  
Washington, DC 20460

6 Date: \_\_\_\_\_

~~FELICIA MARCUS  
Regional Administrator  
Region IX  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, California~~

11 Date: \_\_\_\_\_

~~DANITA YOCOM  
Assistant Regional Counsel  
Region IX  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, California~~

28 CONSENT DECREE

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States v. Carmelo C. Celestre and Celtor  
3 Chemical Corporation also known as MCB Systems, Inc., Civil  
4 Action No. C-93-3824-SBA, relating to the Celtor Chemical  
5 Superfund Site.

6 FOR DEFENDANT CELESTRE

7 Date: 10/5/95

8 Carmelo C. Celestre  
9 CARMELO C. CELESTRE

10 Date: 10/10/95

11 Kenneth E. Keller  
12 KENNETH E. KELLER  
13 STEPHEN DYE  
14 JULIE C. GROLLMUS  
15 Bronson, Bronson & McKinnon  
16 505 Montgomery Street  
17 San Francisco, CA 94111-2514

18 Agent Authorized to Accept Service on Behalf of Above-signed  
19 Party:

20 Agent for service of process:

21 Kenn Keller  
22 Bronson, Bronson & McKinnon  
23 San Francisco, California

24  
25  
26  
27  
28 CONSENT DECREE

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States v. Carmelo C. Celestre and Celtor Chemical  
3 Corporation also known as MCB Systems, Inc., Civil Action  
4 No. C-93-3824-SBA, relating to the Celtor Chemical Superfund Site.

5 FOR DEFENDANT CELTOR

6 Date: 10/11/95

Anthony J. Moulton  
Celtor Chemical Corporation (through  
Insurance Company of North America,  
acting on behalf and in the name of  
Celtor Chemical Corporation)

9 Approved as to form:

10 Date: 10/10/95

Jeffrey M. Judd  
Jeffrey M. Judd  
for O'Melveny & Myers  
275 Battery Street  
San Francisco, CA 94111-3305

13 Agent Authorized to Accept Service on Behalf of Above-signed  
14 Party:

15 Agent for service of process:

O'MELVENY & MYERS  
Martin S. Checov  
Jeffrey M. Judd  
275 Battery Street  
San Francisco, CA 94111-3305

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the Northern District of the State of California. I am over the age of eighteen years and not a party to the within above-entitled action; I am a secretary in the office of the United States Attorney for the Northern District of California; my business address is Room 105267, Federal Building, 450 Golden Gate Avenue, P.O. Box 36055, San Francisco, California 94102; and that on December 8, 1995 I served a copy of the hereunto annexed CONSENT DECREE on the following party by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mailbox at San Francisco, California, addressed as follows:

Ken Keller  
BRONSON, BRONSON & MCKINNON  
505 Montgomery Street  
San Francisco, CA 94111-2514

O'MELVENY & MYERS  
Martin S. Checov  
Jeffrey M. Judd  
275 Battery Street  
San Francisco, CA 94111-3305

I certify under penalty of perjury that the foregoing is true and correct.

Executed on December 8, 1995 at San Francisco, California.

  
JUDY BROCKMEYER